

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 18th day of March, two thousand eight.

PRESENT:

HON. ROSEMARY S. POOLER,
HON. ROBERT D. SACK,
HON. DEBRA ANN LIVINGSTON,
Circuit Judges.

CHUN DENG ZHENG,
Petitioner,

v.

07-2787-ag
NAC

MICHAEL B. MUKASEY,
UNITED STATES ATTORNEY GENERAL,*
Respondent.

FOR PETITIONER: Chun Deng Zheng (pro se), New York,
New York.

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto Gonzales as the respondent in this case.

1 **FOR RESPONDENT:** **Jeffrey S. Bucholtz, Acting**
2 **Assistant Attorney General; M.**
3 **Jocelyn Lopez Wright, Assistant**
4 **Director; Yamileth G. HandUber,**
5 **Attorney, Office of Immigration**
6 **Litigation, U.S. Department of**
7 **Justice, Washington, D.C.**
8

9 UPON DUE CONSIDERATION of this petition for review of a
10 decision of the Board of Immigration Appeals ("BIA"), it is
11 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
12 review is DENIED.

13 Chun Deng Zheng, a native and citizen of the People's
14 Republic of China, seeks review of a June 14, 2007 order of
15 the BIA affirming the January 5, 2006 decision of
16 Immigration Judge ("IJ") Helen Sichel, denying his
17 application for asylum, withholding of removal, and relief
18 under the Convention Against Torture ("CAT"). *In re Chun*
19 *Deng Zheng*, No. A79 682 697 (B.I.A. Jun. 14, 2007), *aff'g*
20 No. A79 682 697 (Immig. Ct. N.Y. City Jan. 5, 2006). We
21 assume the parties' familiarity with the underlying facts
22 and procedural history of this case.

23 When the BIA adopts and affirms the decision of the IJ
24 and supplements the IJ's decision, we review the decision of
25 the IJ as supplemented by the BIA. *See Yan Chen v.*
26 *Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review the
27 agency's factual findings under the substantial evidence
28 standard, treating them as "conclusive unless any reasonable

1 adjudicator would be compelled to conclude to the contrary."
2 8 U.S.C. § 1252(b)(4)(B); see, e.g., *Manzur v. U.S. Dep't of*
3 *Homeland Sec.*, 494 F.3d 281, 289 (2d Cir. 2007) (quoting
4 section 1252 (b)(4)(B); internal quotation marks omitted).
5 However, we will vacate and remand for new findings if the
6 agency's reasoning or its fact-finding process was
7 sufficiently flawed. *Cao He Lin v. U.S. Dep't of Justice*,
8 428 F.3d 395, 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359
9 F.3d 121, 129 (2d Cir. 2004).

10 We conclude that the agency's adverse credibility
11 determination is supported by substantial evidence. The IJ
12 noted that Zheng's testimony "had a highly scripted quality
13 to it," that "[h]e kept looking up as though he was trying
14 to remember how he was supposed to answer the questions, and
15 it seemed even on direct examination that he wasn't able to
16 answer questions unless they were asked of him in a very
17 specific way." Zheng argues that this finding was
18 speculative, unsupported by the record, and influenced by
19 errors in translation. It is well-settled, however, that
20 this Court will afford significant deference to the
21 factfinder's assessment of demeanor. See *Majidi v.*
22 *Gonzales*, 430 F.3d 77, 81 n.1 (2d Cir. 2005). Indeed, an IJ
23 "who assesses testimony together with witness demeanor is in
24 the best position to discern, often at a glance, whether a

1 question that may appear poorly worded on a printed page
2 was, in fact, confusing or well understood by those who
3 heard it; whether a witness who hesitated in a response was
4 nevertheless attempting truthfully to recount what he
5 recalled of key events or struggling to remember the lines
6 of a carefully crafted 'script'; and whether inconsistent
7 responses are the product of innocent error or intentional
8 falsehood." *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 (2d Cir.
9 2004), overruled in part on other grounds by *Shi Liang Lin*
10 *v. U.S. Dep't of Justice*, 494 F.3d 296 (2d Cir. 2007) (en
11 banc). Here, although the IJ did not provide specific
12 examples of when Zheng's testimony sounded scripted -
13 indeed, it may well have seemed to her scripted in its
14 entirety - or when he was unresponsive, we have no basis for
15 declining to defer to her overall assessment of Zheng's
16 demeanor.

17 The IJ also properly relied on an inconsistent
18 statement in Zheng's testimony. The IJ noted that despite
19 his testimony that "Chinese police officers came to [his]
20 house to arrest [him]," he claimed that he did not know
21 whether the Chinese government knew he practiced Falun Gong.
22 To form the basis of an adverse credibility determination, a
23 discrepancy must be "substantial" when measured against the
24 record as a whole. See *Secaida-Rosales v. INS*, 331 F.3d

1 297, 308-09 (2d Cir. 2003). In this case, whether the
2 Chinese government knew about Zheng's practice of Falun Gong
3 is plainly a "substantial" issue. We conclude that this
4 discrepancy, when considered together with the demeanor
5 finding especially when combined with Zheng's failure to
6 rehabilitate his testimony with reliable corroborative
7 evidence, see *Xiao Ji Chen v. U.S. Dep't of Justice*, 471
8 F.3d 315, 341 (2d Cir. 2006), constitutes substantial
9 evidence in support of the IJ's adverse credibility
10 determination. *Id.*

11 Inasmuch as Zheng based his claims for withholding of
12 removal and CAT relief on the same factual predicate as his
13 asylum claim, and the IJ properly found that this evidence
14 lacked credibility, his withholding of removal and CAT
15 claims necessarily fail. See, e.g., *Paul v. Gonzales*, 444
16 F.3d 148, 156 (2d Cir. 2006).

17 For the foregoing reasons, the petition for review is
18 DENIED. Having completed our review, we DISMISS the pending
19 motion for a stay of removal as moot.
20

21 FOR THE COURT:
22 Catherine O'Hagan Wolfe, Clerk
23
24

25 By: _____